



AGENDA

BOARD OF ENVIRONMENTAL REVIEW

FRIDAY, DECEMBER 5, 2008

STATE CAPITOL BUILDING, ROOM 152

1301 EAST SIXTH AVENUE, HELENA, MONTANA

*****Please Note*****

Board members will participate via teleconference.

Board attorney and DEQ staff will be present at above location (note change)

Members of the public are welcome to participate on location; if a teleconference line is needed, the Board Secretary must be notified no later than 1:00 p.m. Thursday, December 4.

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the meeting will begin no earlier than the time specified; however, the Board might not address the specific agenda items in the order they are scheduled. Persons with disabilities, who need an accommodation in order to participate in this meeting, should contact the Board Secretary at (406) 444-6701.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. October 3, 2008, regularly scheduled Board meeting. 10/3/08 Draft Minutes

B. SET 2009 MEETING SCHEDULE 2009 Proposed Schedule

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE

1. Cases assigned to Hearing Officer Katherine Orr

- a. **In the matter of CR Kendall Corporation’s request for a hearing to appeal DEQ’s decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.** On April 27, 2007, Hearing Examiner Katherine Orr issued an *Order Requesting Status Report*. On May 16, 2007, DEQ filed a *Status Report*. An EIS and closure plan should be completed and evaluated in 2008.
- b. **In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.** A *Stay of Proceedings* was issued by the Hearing Examiner on January 19, 2006, upon notification by the Department of the bankruptcy proceeding.
- c. **In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.** On January 11, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued an *Order Granting Extension* on January 15, 2008, giving the parties until November 1, 2008, to file proposed settlement documents or a proposed prehearing schedule. On November 20, 2008, the Hearing Examiner issued a Fourth Order Granting Extension. The parties have until January 6, 2009, to file a proposed settlement or a pre-hearing schedule.
- d. **In the matter of the appeal by Southern Montana Electric (SME) regarding its Air Quality Permit No. 3423-00 for the Highwood Generation Station, BER 2007-06 AQ.** The Department of Environmental Quality filed a status report on September 19, 2008, requesting a stay until the EPA evaluated a reference test method for condensable particulate matter and SME filed a status report on September 19, 2008, requesting a stay of 6 months.
- e. **In the matter of the appeal by ExxonMobil regarding its Air Quality Operating Permit No. OP1564-02 for the Billings Refinery, Yellowstone County, Montana, BER 2007-27 AQ.** The parties filed a *Status Report* on July 9, 2008. Settlement discussions are ongoing.

- f. **In the matter of violations of the Water Quality Act by Park County, Gardiner, MT, BER 2008-01 WQ.** On June 19, 2008, the parties filed a *Request for Extension*. Hearing Examiner Katherine Orr issued an *Order Granting Third Extension* on July 1, 2008, giving the parties until September 1, 2008, to file a hearing schedule or a proposal for settlement. On September 5, 2008, the parties were granted an extension to December 5, 2008, to complete a Supplemental Environmental Plan (SEP) and settlement documents.
- g. **In the matter of violations of the Opencut Mining Act by James Timis at the Timis Excavation Site Flathead County, MT, BER 2008-02 OC.** Hearing Examiner Katherine Orr issued a *First Scheduling Order* on March 28, 2008. A telephonic prehearing conference is scheduled for March 17, 2009, and a hearing is scheduled for April 8, 2009.
- h. **In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-07 HW (MT Waste Systems).** On August 22, Hearing Examiner Katherine Orr issued an order granting the parties until November 21, 2008, to file a prehearing and hearing schedule or to present settlement documents. On November 20, 2008, the parties were granted an extension until February 19, 2009, to present a proposed settlement or submit a pre-hearing schedule.
- i. **In the matter of the appeal by Eastgate Water and Sewer Association of Helena Sand and Gravel, Inc.'s Opencut Permit No. HSG-017, BER 2008-08 OC.** An *Order Requiring Petitioners to File a More Definite Statement* and an *Order Staying Proposed Hearing Schedule* was issued on August 22, 2008. *Petitioner's Response to Board's Order Requiring a More Definite Statement* was filed on September 5, 2008. A *First Scheduling Order* was issued September 8, 2008, and was modified by the hearing examiner on October 22 at the request of the parties. On September 16, 2008, Hearing Examiner Katherine Orr issued an *Order Granting Helena Sand & Gravel, Inc. Intervenor Status*. On November 6 the DEQ filed *The Department's Motion to Dismiss Remaining Claims* and a *Brief in Support of the Department's Motion to Dismiss Remaining Claims*. The Petitioner filed a *Response to Department's Motion to Dismiss* on November 19, 2008. A pre-hearing conference will be held on January 5, 2009.
- j. **In the matter of violations of the Hazardous Waste Act by the Three W's, Inc., and Montana Waste Systems, Inc., BER 2008-09 HW (Three W's).** The parties filed a *Request for Extension* on August 13, 2008. On August 22, 2008, Hearing Examiner Katherine Orr issued a *First Order Granting Extension* giving the parties until November 21, 2008, to file a prehearing and hearing schedule or to present settlement documents. On November 20, 2008, the Hearing Examiner issued a *Second Order Granting Extension* until February 19, 2009, for the parties to provide settlement documents or submit a pre-hearing schedule.
- k. **In the matter of violations of the opencut mining act by TMC, Inc. at the Nuss Pit, Gallatin County, Montana, BER 2008-10 OC.** The parties submitted a *Proposed Prehearing Schedule* on September 22, 2008. Hearing Examiner Katherine Orr issued a *First Scheduling Order* on October 2, 2008, and a *Corrected First Scheduling Order* on October 6, 2008. A telephonic pre-hearing conference is set for February 6, 2009, and a hearing is scheduled for March 5, 2009.
- l. **In the matter of the violations of the Opencut Mining Act by Helena Sand and Gravel, Inc. at the Lake Helena Drive Pit, Lewis and Clark County, Montana, BER 2008-12 OC.** A hearing date will be determined at a telephonic pre-hearing conference on January 20, 2009.
- m. **In the matter of violations of the Montana Water Quality Act by Wilderness Club, LLC., at the Wilderness Club Eureka, Lincoln County, Montana, BER 2008-13 WQ.** DEQ submitted a *Proposed Schedule* on September 19, 2008. Hearing Examiner Katherine Orr issued a *First Scheduling Order* on October 2, 2008. A telephonic pre-hearing conference will be held on May 19, 2009, and a hearing is set for May 27, 2009.

III. ACTION ITEMS

A. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER

1. In the matter of the amendment of ARM 17.40.318 and the adoption of New Rule I pertaining to state revolving fund and public water and sewer projects eligible for categorical exclusion from MEPA review. [Attachments](#)
2. The Department is proposing an addition to Administrative Rules of Montana (ARM) Title 17, Chapter 8, Subchapter 1 to exempt from incorporation by reference an emission standard for mercury, which has been vacated by the courts. [Attachments](#)

B. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES

1. The Department is requesting that the Board adopt the proposed amendments to the Administrative Rules of Montana (ARM) Title 17, Chapter 38, subchapters 1 and 2, as modified in response to public comment, that were proposed in August 2008. The proposed amendments update existing rules regarding public water supplies by clarifying existing rules and by incorporating by reference the most recent applicable sections of the Code of Federal Regulations. Rule changes include clarifications and updates to rules and definitions for existing rules, new rules for clarification and to accommodate new federal requirements, and clarification of federal requirements. The affected rules are: ARM 17.38.101, 201A, 202, 203, 204, 208, 209, New 210, 216, 225, 234, and 239. [Attachments](#)

C. NEW CONTESTED CASE APPEALS

1. **In the matter of violations of the Montana Public Water Supply Laws by Loyal Order of the Moose #639, Helena, Montana, BER 2008-14 PWS.** The Board received the appeal on September 30, 2008. A *First Pre-hearing Order* was issued on October 23, 2008. On November 20, 2008, the parties were given until January 22, 2009 to propose a hearing schedule or file proposed settlement documents. The Board may appoint a permanent hearing examiner or decide to hear the matter. [Appeal Documents](#)
2. **In the matter of violations of the Montana Underground Storage Tank Act by Dutton School District 28 at Dutton Public School, Dutton, Montana, BER 2008-16 UST.** The Board received the appeal on October 7, 2008. On November 14, 2008, the DEQ filed a *Proposed Prehearing Schedule*. A *First Scheduling Order* was issued on November 20, 2008. A pre-hearing conference is scheduled for May 31, 2009 and a hearing is scheduled for April 15, 2009. The Board may appoint a permanent hearing examiner or decide to hear the matter. [Appeal Documents](#)
3. **In the matter of violations of the Montana Septic Disposal and Licensure laws by Missoula Septic Service, Inc., Missoula, Montana, BER 2008-17 SDL.** The Board received the appeal on October 16, 2008. On November 13, 2008, the DEQ filed a *Proposed Prehearing Schedule*. A *First Scheduling Order* was issued on November 20, 2008. A pre-hearing conference is scheduled for April 16, 2009 and a hearing is scheduled for April 24, 2008. The Board may appoint a permanent hearing examiner or decide to hear the matter. [Appeal Documents](#)
4. **In the matter of violations of the Montana Underground Storage Tank Act by Tom Pelican and Theresa Pelican at Swan Lake Stage Stop, 72241 Highway 83, Swan Lake, Lake County, Montana, BER 2008-18 UST.** The Board received the appeal on November 18, 2008. The Board may appoint a hearing examiner or decide to hear the matter. [Appeal Documents](#)
5. **In the matter of the appeal of the Record of Decision under the Major Facility Siting Act related to the Montana Alberta Tie Ltd. transmission line, BER 2008-19-MFS, by Jerry McRae and Katrina Wilson Martin.** The Board received the appeal November 21, 2008. The Board may appoint a hearing examiner or decide to hear the matter. [Appeal Documents](#)
6. **In the matter of the appeal of the Record of Decision under the Major Facility Siting Act related to the Montana Alberta Tie Ltd. transmission line, BER 2008-20-MFS, by Chris Stephens.** The Board received the appeal November 21, 2008. The Board may appoint a hearing examiner or decide to hear the matter. [Appeal Documents](#)
7. **In the matter of the appeal of the Record of Decision under the Major Facility Siting Act related to the Montana Alberta Tie Ltd. transmission line, BER 2008-21-MFS, by Michael Koenig.** The Board

received the appeal November 21, 2008. The Board may appoint a hearing examiner or decide to hear the matter. [Appeal Documents](#)

8. **In the matter of the appeal by the USDA Forest Service Northern Region of the air quality major open burning permit fee for calendar year 2009, BER 2008-22 AQ.** The Board received the appeal November 24, 2008. The Board may appoint a hearing examiner or decide to hear the matter. [Appeal Documents](#)
9. **In the matter of the appeal and request for hearing by Montana Environmental Information Center, Citizens for Clean Energy, Sierra Club, and National Parks Conservation Association of the Southern Montana Electric Generation and Transmission Cooperative Highwood Generating Station Air Quality Permit No. 3423-01, BER 2008-23 AQ.** The Board received the appeal November 25, 2008. The Board may appoint a hearing examiner or decide to hear the matter. [Appeal Documents](#)

D. FINAL ACTION ON CONTESTED CASES

1. **In the matter of violations of the appeal by Plum Creek Manufacturing, Inc. of its Montana Groundwater Pollution Control System Permit No. MTX00092, BER 2008-06 WQ.** On September 22, 2008, the Board received a letter from the appellant's attorney withdrawing the appeal. An order to dismiss the case will be presented for signature by the Chair. [Dismissal Order](#)
2. **In the matter of revocation of air quality permit #2733-02, Livingston Sand and Gravel, Inc., Livingston, Montana, BER 2008-15 AQ (Crazy Mountain Rock).** The Board received the appeal on October 2, 2008. On November 18, the Board received a letter from the appellant stating the matter had been settled through an Administrative Order on Consent and that they wanted to withdraw their appeal. An order to dismiss the case will be presented for signature by the Chair. [Dismissal Order](#)

IV. GENERAL PUBLIC COMMENT

- A. Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

V. ADJOURNMENT